

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

INNOVA PATENT LICENSING, LLC,

Plaintiff,

v.

3COM CORPORATION, et al.,

Defendants.

Civil Action No. 2:10-CV-00251-DF-CE

JURY TRIAL DEMANDED

**INNOVA'S SUR-REPLY TO CERTAIN DEFENDANTS' MOTION
FOR INTRADISTRICT TRANSFER FROM THE MARSHALL
DIVISION TO THE SHERMAN DIVISION**

Moving Defendants do not dispute the especially broad discretion the Court enjoys when determining intra-district transfer. The Federal Rules allow “significant discretion” to determine the place of trial within a district. *Morrow v. City of Tenaha Deputy City Marshal*, 2008 WL 5203843, *2 (E.D. Tex., Dec 15, 2008). Nor do the Moving Defendants dispute that the vast majority of Defendants have remained silent – with full knowledge of this Motion – as to whether Sherman is more convenient for them. Instead, Moving Defendants argue that the non-moving Defendants’ silence should be taken as assent to *intra*-district transfer. Reply at 2 (Dkt. No. 307). But the non-moving defendants have revealed their desire to transfer the case somewhere else entirely. Motion at 1, n.1 (Dkt. No. 283). Thus, their silence does not appear to mean agreement at all. If the non-moving Defendants’ silence does indicate acquiescence to transfer, then these Defendants should not be heard to later argue that some other venue is more convenient still. Such conduct forces the Court and the parties to waste substantial time and resources litigating venue, instead of substantive claims. Accordingly, the Moving Defendants

have not shown that transfer is clearly more convenient to all parties and witnesses and their Motion should be denied.

Dated: January 24, 2011

Respectfully submitted,

/s/ Christopher D. Banys
Christopher D. Banys

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 24th day of January, 2011.

/s/ Lilli McBride _____

Lilli McBride